LIBRARY
SUPREME COURT, U.S.

In the Supreme Court of the United States

OCTOBER TERM, 1971

JOHN V. TATUM and PATRICIA TATUM, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-660

JOHN V. TATUM and PATRICIA TATUM, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Southern District of New York, petitioners were convicted on two counts of having facilitated the concealment and sale of heroin and one count of conspiracy to do so, in violation of 21 U.S.C. (1964 ed.) 174. Both received concurrent prison sentences of ten years and a $10,000 fine on each count. The court of appeals affirmed without opinion.

The evidence showed that in February 1970, agents of the Joint Federal Narcotics Task Force established

surveillance of petitioner John Tatum, who was known to have prior state and federal convictions for narcotics offenses (H. 13-17, 20-21).[1] Throughout the period of surveillance, John Tatum was frequently observed late at night driving from his residence in Queens to an apartment maintained by him in Manhattan. He was often observed leaving the Manhattan apartment with packages and paper bags which he then distributed at various bars and hotels in Harlem (H. 16-18, 21-26, 28-33; T. 36). John Tatum was at times accompanied by his wife, petitioner Patricia Tatum (H. 23, 30-31; T. 36, 54-55).

On March 20, 1970, just after midnight, the Tatums drove to a Manhattan bar. Patricia remained in the automobile while John entered the bar, emerging a short while later with Vera Frazier (H. 14, 123-124). John Tatum spoke with Frazier for a short period, returned to the automobile, and then rejoined Frazier, handing her a brown paper bag and receiving from her money in bill form (H. 15, 124-125).

Following the departure of petitioners, Vera Frazier placed the bag in the right hand pocket of her coat (H. 18). She then entered a cab, which stopped after a while to admit Crawford Anderson. At this point, agents approached the cab and, as they identified themselves, Frazier took the paper bag from her coat and attempted to stuff it behind the seat of the car (H. 18-20, 125). One agent seized the bag, which contained a substance later identified as heroin (H.

---

[1] "H." refers to the transcript of the hearing on the motion to suppress, and "T." refers to the transcript of the trial proceedings.

19; T. 164-165), and placed Frazier and Anderson under arrest (H. 19-20; T. 13).[2]

On the same day, a search warrant was obtained for the Tatums' Manhattan apartment. That search resulted in the recovery of a quantity of heroin as well as narcotics packaging materials (T. 128, 130, 136, 145-146, 165). At the same time, surveillance was established at petitioners' residence in Queens. Shortly before midnight, John Tatum was arrested as he drove away from the house (H. 62-63). As he was placed under arrest, he stated: "If I had my piece [gun], I would have killed you all" (H. 57, 63, 107; T. 74). After the arrest, petitioner was fully advised of his rights (T. 86). He informed the agents that Patricia Tatum was in the house, but refused to assist them in gaining entry (H. 106-107).

Agents then proceeded to the house, knocked on the door and heard footsteps coming to the door. After announcing that they were the police and informing Patricia Tatum that she was under arrest, they heard someone running and thereupon forcibly entered the house (H. 64-65). The officers fanned out in an attempt to locate petitioner. Two officers went to the basement, where they saw in an open cabinet a pot with a plastic bag containing what was later determined to be quinine hydrochloride and a can containing manitol (H. 76-78, 89).[3] One of the agents opened

---

[2] Frazier was indicted with petitioners. After her arrest, she was released on bail and is presently a fugitive.

[3] Quinine and manitol are common dilutants for pure heroin (Tr. 164-165).

the door of a closet and observed a plastic bucket filled with numerous glassine bags containing 330 grams of heroin (H. 78, 89-90; T. 165). The agents then left the basement and returned to the main floor where they observed Patricia Tatum in the custody of other agents (H. 78-79, 90, 108). After the arrest was effected, the agents searched the premises and seized a quantity of cocaine, a box containing heroin, a revolver, empty glassine envelopes, envelopes containing white powder and travelers' checks (H. 92-93, 100, 104, 115, 117, 119; T. 165). The items discovered after the arrest were suppressed as unlawfully seized while those discovered during the course of the search for Patricia Tatum were admitted into evidence (H. 118, 132, 136).

After Patricia Tatum was arrested, she was advised of her rights (T. 47-49, 88-89). She thereafter stated to agents, "I made $75,000 on the stuff this year, and I knew I would go to jail, so I enjoyed every minute of it" (T. 50, 89). She also asked an agent how much money he made last year and when he responded "approximately $15,000", she replied: "I made five times that amount" (T. 77).

The various contentions raised by petitioners are without merit. Their argument that the agents conducted an unlawful search of petitioners' residence after Patricia Tatum's arrest was conceded by the government below (H. 134-135), and those items seized as a result were suppressed, in accordance with this Court's decision in *Chimel* v. *California*, 395 U.S. 752. However, the district court properly concluded that the evidence discovered during the search

for Patricia Tatum was lawfully seized and admissible. *Warden* v. *Hayden*, 387 U.S. 294; *United States* v. *Thweatt*, 433 F. 2d 1226 (C.A. D.C.); *United States* v. *Pino*, 431 F. 2d 1043 (C.A. 2).

There is no reason for this Court to consider petitioners' claim that they were denied standing to object to the introduction into evidence of heroin seized from Vera Frazier since this argument was not made before either the district court or the court of appeals.[4] See, *e.g.*, *Lawn* v. *United States*, 355 U. S. 339, 362, n. 16. In any event, the arrest of Vera Frazier and the seizure of narcotics on her person was lawful since the arresting agents had only shortly before witnessed circumstances which amply supported the inference that a felony, *i.e.* the sale of narcotics, had been committed in their presence. Therefore, no warrant was required to effect the arrest. *Draper* v. *United States*, 358 U. S. 307; *United States* v. *Jamison*, 395 F. 2d 716 (C.A. 2), 26 U.S.C. 7607(2). Petitioners also suggest (Pet. 15) that the arrest of Patricia Tatum was not supported by probable cause. As the district court found, however (H. 131-132), the agents were justified in concluding from their observations of the sale of narcotics to Frazier that Patricia Tatum was aware of the sale and had participated in it with John Tatum.

---

[4] In fact, petitioners did object to the introduction into evidence of the heroin seized from Frazier on the grounds that there was no evidence to show that the bag seized was the same one Frazier had received from John Tatum. The objection was overruled, without comment (T. 34). Moreover, the circumstances surrounding the arrest of Frazier were fully explored by defense counsel (T. 19-34).

Petitioners' contention that evidence seized in the Eastern District of New York should not have been received at trial in the Southern District was not raised below and is frivolous. The contention that evidence of certain incriminating utterances should not have been admitted (T. 41-43, 47-50) was also not raised on appeal. In any event, as the facts set forth above make clear, the statements proffered by both petitioners at the time of their arrests, and with respect to Patricia Tatum, after she had been advised of her rights, were voluntary and unsolicited and thus were properly received in evidence.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 452399 37-